

Staff Summary Report



Council Meeting Date: 06-23-04

Agenda Item Number: 9

SUBJECT: Request for approval of the Playa Del Norte Development Parcel Agreement for "Mondrian" Project

DOCUMENT NAME: 20040623dsca01 **RIO SALADO MASTER PLAN (0112-07-03)** Resolution 2004.60

SUPPORTING DOCS: Yes.

COMMENTS: The attached Development Parcel Agreement is the first development at the Playa Del Norte site on the north shore of Tempe Town Lake. The "Mondrian" project by Grey Development Group is a planned mixed-use project consisting of 508 quality residential units and 8,750 square feet of retail and restaurant space fronting the lake.

Following review, comment and required approvals on the proposed project by the Redevelopment Review Commission, the Rio Salado Commission, and various city departments, staff has developed the attached Parcel Agreement as a performance-based package that dictates a "start of construction date" prior to December 30, 2004 and a "total project completion date" by December 30, 2007.

PREPARED BY: Chris Anaradian, Rio Salado Manager (x2204)

REVIEWED BY: Jan Schaefer, Economic Development Manager (x8036)

LEGAL REVIEW BY: Marlene A. Pontrelli, City Attorney (X8120)

FISCAL NOTE: The full terms of this agreement commit the development to payment of a \$2.6M principal amount in town lake capital costs, in addition to approximately 3.3% of the ongoing annual town lake operational and maintenance expenses (approximately \$90K in 2003-04). The development will also contribute \$1.36M towards the construction of the extension of Miller Road, a city street. In exchange, the agreement outlines performance based incentives that represent an estimated \$1.83M in costs to the City.

RECOMMENDATION: Adoption of Resolution 2004.60.

ADDITIONAL INFO:

RESOLUTION NO. 2004.60

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF TEMPE AUTHORIZING THE MAYOR TO EXECUTE
THE PLAYA DEL NORTE DEVELOPMENT PARCEL
AGREEMENT FOR PARCEL 5 BETWEEN THE CITY,
PLAYA DEL NORTE AND GDG PARTNERS, L.L.C.**

WHEREAS, Playa del Norte, L.L.C. ("Playa") and the City of Tempe (the "City") entered into a Restated Development and Disposition Agreement, dated August 21, 2003 (the "Restated DDA") for that portion of real property known as the Rio Salado Boardwalk Development Project (the "Property"); and

WHEREAS, the Restated DDA provides that the development of the Property will be accomplished through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers; and

WHEREAS, GDG Partners L.L.C. (the "Builder") has obtained an assignment of the development rights applicable to a portion the Property (the "Builder Property") subject to the responsibilities and obligations of Playa, as defined in the Restated DDA; and

WHEREAS, Section 5.4 of the Restated DDA between the City and Playa permits Playa to assign partial development responsibilities for specific parcels of property; and

WHEREAS, the City, Playa and Builder believe that the development contemplated in and required by entering into an agreement with the Builder and will result in improvements to, and new uses of, portions of the Property, and will economically benefit the City and provide benefits to the residents of the City and the public in general;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute the Playa del Norte Development Parcel Agreement for Parcel 5 between the City of Tempe, Playa del Norte and GDG Partners L.L.C., a copy of which is on file with the City Clerk's office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2004.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

WHEN RECORDED, RETURN TO:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

PLAYA DEL NORTE
SUBORDINATE DEVELOPMENT PARCEL AGREEMENT
PARCEL NO. 5

[Playa del Norte/ Rio Salado Boardwalk Development Project]
Document Number _____

THIS SUBORDINATE DEVELOPMENT PARCEL AGREEMENT ("**Parcel Agreement**") is made as of the _____ day of _____, 2004 ("**Agreement Date**"), among the CITY OF TEMPE, an Arizona municipal corporation (the "**City**"), PLAYA DEL NORTE, L.L.C., an Arizona limited liability company ("**Playa**" or "**Master Developer**") and GDG Partners L.L.C., an Arizona limited liability company (the "**Builder**").

RECITALS:

A. WHEREAS, the City and Playa entered into a Restated Development and Disposition Agreement dated August 21, 2003, and recorded in the Maricopa County Recorder's Office as Document Number 2003-1331774 (the "**Restated DDA**") concerning the development of real property known as the Rio Salado Boardwalk Development Project (the "**Property**") and a First Addendum to the Restated Development and Disposition Agreement dated June 10, 2004; and

B. WHEREAS, the Restated DDA provides that the development of the Property will be accomplished through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers; and

C. WHEREAS the Builder has obtained an assignment of the development rights applicable to a portion the Property (the "**Builder Property**") subject to the responsibilities and obligations of Playa, as defined in the Restated DDA; and

D. WHEREAS, Section 5.4 of the Restated DDA between the City and Playa permits Playa to assign partial development responsibilities for specific parcels of property; and

E. WHEREAS, the City, Playa and Builder believe that the development of the Builder Project will result in improvements to, and new uses of, portions of the Property, and will economically benefit the City and provide benefits to the residents of the City and the public in general; and

F. WHEREAS, the City acknowledges that it will, directly or indirectly, realize substantial tangible and intangible benefits from the Builder's performance of its obligations under this Parcel Agreement, including, but not limited to, increased tax revenues, increased live and work opportunities, payment of town lake capital assessments, and ongoing annual payments for the operation and maintenance of the town lake and surrounding park areas; and

G. WHEREAS, the site of the Builder's Property is located within a single central business district. The improvements to be made to various portions of the Builder's Property will result in an increase in its value of at least one hundred percent (100%).

NOW THEREFORE, in consideration of the above premises, the promises contained in this Parcel Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

AGREEMENT:

ARTICLE I

SUBORDINATION OF DEVELOPMENT PARCEL AGREEMENT

This Parcel Agreement is subordinate to the Restated Agreement and this Parcel Agreement constitutes a subordinate Development Parcel Agreement for the Builder Property as described on the *Exhibit "A"* attached hereto and incorporated herein by reference; provided, however, that Builder shall have no obligations for the performance of Playa's obligations under the Restated DDA other than as may be expressly set forth in this Parcel Agreement. This Parcel Agreement is a development agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such, and is in accordance with A.R.S. § 9-500.11.

ARTICLE II

DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 "Agreement Date." The term Agreement Date shall mean and refer to the date this Parcel Agreement was approved by the City Council.

2.2 "Builder." The term "Builder" shall mean and refer to the developer of the specific parcel within the Property development as described in the Restated DDA.

2.3 "Builder Conceptual Site Plan." The term "Builder Conceptual Site Plan" shall mean and refer to the Plan illustrated in *Exhibit "C"* attached hereto and incorporated herein by this reference.

2.4 "Builder Final PAD." The term "Builder Final PAD" shall mean and refer to that Final Planned Area Development or Amended Final Planned Area Development which is

approved by the City with respect to the Builder Property and which sets forth specific uses, densities, features and other development matters with respect to the Builder Property.

2.5 “Builder Improvements.” The term “Builder Improvements” shall mean and refer to all the improvements which may be constructed from time to time on the Builder Property for the Builder Project as defined in this Agreement, including, without limitation, all structures, infrastructure, utilities, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Builder.

2.6 “Builder Preliminary PAD.” The term “Builder Preliminary PAD” shall mean and refer to that Preliminary Planned Area Development or Amended Preliminary Planned Area Development which is approved by the City with respect to the Builder Property and which sets forth general uses, densities, features and other development matters with respect to the Builder Property.

2.7 “Builder Project.” The term “Builder Project” shall mean the project planned by the Builder on and within the Builder Property in general conformance with the Builder Conceptual Site Plan and the Builder Final PAD.

2.8 “Builder Project Costs.” The term “Builder Project Costs” means reasonable costs expended by or on behalf of Builder in connection with acquiring the Builder Property, planning and designing the Builder Project, including, but not necessarily limited to, architectural, design, engineering and consultant fees; tests, studies and reports; filing fees; plan check, inspection and other similar fees; all applicable City development fees; supervision and administration fees; costs of required payment, performance and other bonds; costs of insurance; and other customary “soft” costs and any “hard” costs and expenses incurred directly or indirectly by Builder in connection with the performance of its redevelopment and related obligations under this Agreement.

2.9 “Builder Property.” The term “Builder Property” shall mean and refer to that real property more particularly described in *Exhibit “A”* attached hereto and incorporated herein by this reference.

2.10 “Builder Schedule of Performance.” The term “Builder Schedule of Performance” shall mean and refer to that schedule of performance agreed to by the City and the Builder as set forth in *Exhibit “D”* attached hereto and incorporated herein by this reference, which is consistent with the Schedule of Performance of the Restated DDA.

2.11 “City.” The term “City” shall mean and refer to the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

2.12 “City Property Parcel(s).” The term “City Property Parcel(s)” shall mean and refer to that portion of the City Property, as described in the Restated DDA, which is currently owned or controlled by the City and legally described in *Exhibit “B”* attached hereto and incorporated herein by this reference.

2.13 “Improvement District.” The term “Improvement District” shall mean and refer to City of Tempe Improvement District No.179.

2.14 “Improvements.” The term “Improvements” shall mean and refer to all the “Improvements” as defined in the Restated DDA.

2.15 “Letter of Completion.” The term “Letter of Completion” shall mean a final written acceptance of the completed and inspected phase(s) of the Builder Project issued by the Economic Development Department. A Letter of Completion will not be issued until each Phase is completed in conformance with this Agreement and the Builder Schedule of Performance and accepted by the City.

2.16 “Playa Project.” The term “Playa Project” means the project master-planned by Playa upon and within the Property as defined in the Restated DDA.

2.17 “Phase” The term “Phase” shall mean any of the six (6) phases of the Builder Property as depicted on the attached *Exhibit “E”*.

2.18 “Subdivision Plat.” The term “Subdivision Plat” shall mean and refer to the reallocation of parcels as developed by Playa and approved by the City. The Subdivision Plat shall be in conformance with the Preliminary PAD as defined in the Restated DDA.

ARTICLE III

DEVELOPMENT PLAN

3.1 Duration of Development Agreement. The term of this Parcel Agreement shall continue and exist from the Agreement Date until all obligations of the parties under this Parcel Agreement have been fully performed, unless sooner terminated as provided in Article VIII.

3.2 Builder Conceptual Site Plan. The Builder Conceptual Site Plan herein identified as *Exhibit “C”* shall set forth the scope of development for the Builder Property depicting the types of basic land uses, permissible range of the intensity and density of such uses, and a permissible range in the relative height, bulk and size of buildings and structures on the Builder Property. The intensity and density of the land uses within the Builder Project as described in the Builder Conceptual Site Plan may be flexible, but are subject to becoming refined and final through the normal City approval process of the Builder Preliminary PAD and Builder Final PAD. Once approved, the Builder Property shall be developed in substantial conformance with the Builder Conceptual Site Plan/Builder Preliminary PAD and Builder Final PAD.

3.3 Irrevocable License for Offsite Storm Water Retention. In accordance with the Restated DDA, the City and Playa acknowledged and agreed on the need to maximize the developable land within the Playa Project to offset the development costs associated with development of the Playa Project. As such the City agreed to grant Playa an irrevocable license to use a portion of the City Property, identified as the “Offsite Storm Water Retention Area” on Exhibit “G” of the Restated DDA, for the purpose of meeting the City requirements for on-site water retention for the Playa Project.

3.4 Improvement and Maintenance of Offsite Storm Water Retention Area.

Concurrent with initial vertical development on the Property, Playa shall grade and install landscaping and an associated irrigation system, within the Offsite Storm Water Retention Area. The City, Playa and the Builder agree that the construction of the Offsite Storm Water Retention Area improvements shall be financed by the Improvement District in accordance with and pursuant to the provisions of *Section 6.1* of this Parcel Agreement. The City shall be responsible for perpetual maintenance thereof, however, the Builder in accordance with the provisions of *Section 7.4* of this Agreement shall be responsible for it's pro rata share of the maintenance costs.

3.5 Interim Annual Rio Salado Town Lake Operation and Maintenance Assessments for Storm Water Retention Area, CDF Parcel No. 55. Builder in accordance with the provisions of *Section 7.4* of this Parcel Agreement shall be responsible for 40.72% of that portion of the interim Annual Rio Salado Town Lake Operation and Maintenance Assessments that is attributable to the Offsite Storm Water Retention Area. For the purposes of calculating the Interim Annual Rio Salado Town Lake Operations and Maintenance Assessment, the Offsite Storm Water Retention Area will be permanently assessed at the interim twenty percent (20%) rate ("Interim Assessment") that is applicable to undeveloped property.

ARTICLE IV

ACQUISITION OF CITY PROPERTY

4.1 Acquisition of City Property. In accordance with the Restated DDA as amended, the City shall continue to hold fee title to the City Property Parcel(s) as described in Exhibit "H" of the Restated DDA until such time as the City has approved the Builder Final PAD and the recordation of a Subdivision Plat. At such time as either Playa or the Builder desires to acquire the City Property Parcel(s), and so long as neither Playa nor the Builder is in breach of this Parcel Agreement and the Restated DDA, Playa shall deliver a written notice to the City, which notice shall indicate: (a) the legal description of the City Property Parcel(s) to be conveyed to either Playa or the Builder; (b) the attributable purchase price to be paid by either Playa or Builder as outlined in *Section 4.2.2* below; and (c) the date by which the closing of the conveyance of the City Property Parcel(s) is desired by either Playa or the Builder. The City and Playa, or the Builder in the event the Builder is the purchaser, shall thereupon enter into an escrow with a third party escrow agent mutually acceptable to the City and either Playa or the Builder ("Escrow Agent"), who shall hold all documents, receive all monies and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. The conveyance of City Property Parcel(s) to either Playa or the Builder is subject to a purchase and sale agreement and the approval of the City Council. Any purchase and sale agreement shall include, among other things, the provision that the terms are as set forth in this Article IV.

4.1.1 Legal Description. The legal description of the City Property Parcel(s) to be conveyed to either Playa or the Builder shall be determined by Playa and the City in accordance with an ALTA survey (the "Survey") prepared by a registered land surveyor in the State of Arizona and mutually and reasonably acceptable to the City and Playa. The cost of the Survey of the parcel shall be paid by Playa.

4.2 Condition of City Property Parcel(s). The City makes no warranty as to the condition of the City Property Parcel(s). All City Property Parcel(s) conveyed from City to either Playa or the Builder is delivered in an "As Is" condition. Playa and the Builder acknowledge that the Property is within the 65 DNL noise exposure contour for the Phoenix Sky Harbor International Airport as defined in the 2000 Federal Aviation Regulation (F.A.R.) Part 150 Noise Compatibility Study.

4.2.1 Form of Deed. Fee simple title to the City Property Parcel(s) conveyed by the City to Playa or the Builder shall be conveyed pursuant to special warranty deed executed by the City, subject to all liens and encumbrances of record.

4.2.2 Purchase Price. The purchase price of the City Property Parcel(s) shall be the City's actual cost per square foot of acquiring the City Property Parcel(s) as described in Exhibit "H" of the Restated DDA.

4.2.3 Prorations. All real property taxes and assessments shall be prorated between the City and Playa or the Builder as of the date of closing of the conveyance of the City Property Parcel(s) to Playa or the Builder, based upon the latest available information.

4.2.4 Escrow Fees. The City and Playa or the Builder shall each pay one-half (1/2) of all escrow fees in connection with the conveyance of the City Property Parcel(s). Playa or the Builder shall pay all of the customary recording fees. The City, Playa and the Builder shall bear their own costs, including attorneys' fees, in connection with the negotiation, due diligence, investigation and conduct of the transaction.

ARTICLE V

BUILDER'S DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION

5.1 Builder Schedule of Performance. As a condition to receiving the benefits of this Parcel Agreement as set forth in Article VII hereafter, the City requires Builder to plan and develop the Builder Property pursuant to the Builder Schedule of Performance attached hereto as *Exhibit "D"*.

5.2 Approvals. The City hereby agrees that, in connection with all requests for approval relating to the development within the Builder Property and the construction of any Builder Improvements that no extraordinary plan or review requirements will be imposed on the Builder.

5.3 Appointment of Representative. In order to help expedite decisions by the City relating to the Builder Project, the City agrees to designate a representative ("City Representative") of the City to act as a liaison between the City, the Builder and between the various departments of the City, and the Builder. The City Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this *Section 5.3* to provide the Builder with one individual as the City's principal representative with respect to the Builder Project. The Builder shall also designate a representative ("Builder Representative") who shall serve as a liaison with respect to the Builder Project and the City and Playa. The initial City

Representative shall be Chris Anaradian and the initial Builder Representative shall be Joseph E. Meyer. Representatives may be changed at any time by the parties giving notice as provided in *Section 9.3*.

5.4 Appointment of Building Inspector. In order to ensure continuity throughout the development of the Builder Project and to insure that one person shall be available to assist the Builder with questions or issues that may arise during the building inspection process, the City agrees to designate a building inspection representative reasonably acceptable to Builder ("Inspection Representative") and two (2) building inspectors, the intent being of this *Section 5.4* to provide the Builder with one individual as the City's representative concerning matters that arise during the inspection process and two (2) inspectors ("Inspectors") to perform the actual inspections in accordance with the terms of this Parcel Agreement. The Inspection Representative and the Inspectors shall be available at all reasonable times

5.5 Delegation of Development Responsibilities. Playa has chosen to delegate and assign its responsibilities and obligations under the Restated DDA for development of the Builder Property described in *Exhibit "A"* to the Builder, however, Playa remains responsible for the development of the Property pursuant to the Restated DDA, and nothing herein is intended to relieve Playa of its responsibilities and obligations under the Restated DDA as it relates to any obligations not assumed by the Builder in this Parcel Agreement

5.6 Subordinate Development Parcel Agreement. The parties hereby agree that this Parcel Agreement is subject to City Council approval and shall be subordinate in all respects to the terms and conditions of the Restated DDA. In the event of any conflict or discrepancy between the provisions of this Agreement and the terms and conditions of the Restated DDA, the Restated DDA shall govern and control. Even though the Builder is responsible for the development of the Builder Project and the obligations of this Agreement, Playa remains responsible for all of its obligations under the Restated DDA.

5.7 Letter of Completion. Promptly after final completion of any Phase in accordance with the Final PAD approved by the City, the City shall furnish to the Builder a Letter of Completion verifying that the construction of Builder Improvements has been completed in compliance with the Builder Schedule of Performance. Upon issuance of the Letter of Completion, the Builder may record the Letter of Completion in the Office of the Maricopa County, Arizona Recorder. In the event that the City refuses or fails to provide the Letter of Completion, the City shall, within five (5) days after written request by the Builder issue a written statement indicating in adequate detail why the Letter of Completion was not issued by the City and what measures or acts the City requires of Builder before the City will issue the Letter of Completion.

5.8 Builder Project Signage. In recognition of the importance of the Builder Project as the initial development on the north bank of Town Lake, the City will consider approval of: (i) temporary marketing signs, including without limitation banners in the public rights of way along surrounding public streets, future development signs within the Playa Project, and Burma-Shave signs; and (ii) and (ii) permanent commercial signage for any Phases that are developed in whole or in part for retail or restaurant uses. However, all such signage must be presented and approved through the City's normal review process.

ARTICLE VI

CITY AND BUILDER INFRASTRUCTURE OBLIGATIONS

6.1 Improvement District Obligations. The Restated DDA provides for the creation of the Improvement District, which is subject to a separate Improvement District Agreement. The Builder acknowledges and agrees that the Builder Property is located within the Improvement District and agrees to fully pay the allocated assessments charged against the Improvement District based upon the bonds issued for the purpose of paying the costs and expenses of construction of the improvements.

6.2 City Improvements to Offsite Storm Water Retention Area. In addition to and/or in lieu of the Playa improvements to the Offsite Storm Water Retention Area that are described in *Section 3.4* above, the City shall install drainage, grading, landscaping, and irrigation improvements (collectively, the "City Improvements") in the Offsite Storm Water Retention Area in substantial conformance with the Builder's Conceptual Site Plan. The City Improvements shall be completed not later than twenty-four (24) months after Builder commences construction of the first Phase of the Builder Project. The Builder is responsible for the payment of the City's Residential Development Fees. However, the City and Builder agree that all proceeds from Residential Development Fees assessed to the Builder and paid to the City for the Builder Project will be dedicated by the City to the installation of the City Improvements. Builder shall pay the Residential Development Fees the earlier of: (i) thirty (30) days after receipt of written notice from the City that the Residential Development Fees are required for the installation of the City Improvements; or (ii) one (1) year from the date the Residential Development Fees would have been otherwise payable to the City.

6.3 Parking Lot Improvements. Not later than the date that is ninety (90) days following the City's issuance of a Letter of Completion for the final Phase of Builder's Project, Builder will cause the construction of parking improvements on the property owned by the City lying to the east of the Builder Property in accordance with plans approved by the City.

6.4 Relocation of Town Lake Recharge Well #3 Devices. As part of the development of the Builder's Property, certain above ground devices associated with the Town Lake Recharge Well #3 will need to be relocated. The Builder shall have the obligation to relocate such devices in connection with Well #3. Provided that Builder's timely complies with Item 1 of the Builder's Performance Schedule, the City and Builder agree that the City will contribute a maximum of Sixty-Five Thousand Dollars (\$65,000.00) towards the Builder's relocation of Well #3. The City will cooperate with Builder as is reasonably required to approve designs and obtain permits to allow the relocation to occur onto either private or City property as appropriate.

6.5 Fill Material. Subject to Builder's timely compliance with Item 2 of the Builder Performance Schedule, City shall notify Builder of the availability of any excess fill material owned by the City as the result of a City construction project, and Builder shall have a period of one (1) week to notify the City of Builder's interest in taking such fill material along with a proposed schedule for the removal of the fill material. City shall have 5 days thereafter within which to notify Builder that the proposed schedule is not acceptable to the City, in which event

City and Builder shall work together in good faith to resolve the City's objections. If City does not timely deliver notice pursuant to the preceding sentence, City shall be deemed to have approved the proposed schedule. If Builder timely provides notice of interest, then Builder shall have an additional thirty (30) days after the City's approval or deemed approval of the proposed schedule to remove the fill material. Builder acknowledges that any fill material provided under this Section shall be without representation or warranty of any kind from the City. If Builder fails to timely provide notice or remove the fill material, then Builder shall have no further rights with respect to that particular fill material.

ARTICLE VII

INCENTIVES AND ASSESSMENTS

7.1 Government Property Lease Excise Tax; Tax Abatement. Due to the increased costs of the development of off-site and on-site infrastructure Improvements resulting from physical constraints associated with the development of the Builder Property, the future development of the Builder Property is economically feasible only by the commitment of the City to provide the Builder with the benefit of certain statutorily-authorized Government Property Lease Excise Tax status, including but not limited to certain property tax abatements currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209. Therefore, subject to Builder's timely compliance with Items 2 and 5 of the Builder Schedule of Performance, the City agrees to grant to Builder the statutorily-authorized Government Property Lease Excise Tax status pursuant to the provision of A.R.S. §§ 42-6201 through 42-6209 for a thirty-five (35) year period, or for the maximum term allowable by law, and subject to the conveyance of the Builder Property to the City and a lease of the Builder Property back to the Builder. The first eight (8) years of the lease shall be abated ("Abatement Period"). During this Abatement Period, an annual in-lieu payment shall be payable to the City on or before June 30 of each year in an amount equal to Fifty Thousand Dollars (\$50,000.00) less the amount of the property tax payments for the Playa Project for the prior tax year. No in lieu payment shall be required for any tax year in which the combined property tax payments for the Playa Project exceed \$50,000 annually. Builder shall be responsible for 40.72% of this annual in-lieu payment. In connection therewith, the City hereby agrees to accept, subject to Council approval (provided that such approval shall not substantively alter the terms and conditions of this Parcel Agreement), and the demonstrated need of such incentives and further subject to the terms and provisions contained in **Sections 7.1.1** and **7.1.2** of this Parcel Agreement, the conveyance of the Builder Property and the Builder Improvements from the Builder and to lease-back all such Builder Property and Builder Improvements to the Builder making such request upon the terms and conditions set forth in a lease substantially in the form attached hereto as **Exhibit "F"** subject to further Council approval of the lease which shall be in conformance with the provisions of this Parcel Agreement and subject to the following additional conditions:

7.1.1 Insurance Provisions for Lease. Any lease entered into with the City for the purpose of providing Government Property Lease Excise Tax shall provide that during the term of the lease, the tenant thereunder shall, at the tenant's expense, carry and maintain, for the mutual benefit of the City and the tenant, general public liability insurance against claims for bodily injury, death or property damage occurring in, upon or about the premises, with limits of not less than \$5,000,000 combined single limit per

occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of the tenant's policies of liability insurance shall name the City and all leasehold mortgagees as additional insureds and shall contain no special limitations on the coverage, scope or protection afforded to the City, its officials, employees or volunteers. The tenant's policy of liability insurance shall be primary as respect to the City and any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Full policies or certificates with respect to all policies of insurance required to be carried by the tenant shall be delivered to the City in form and with insurers acceptable to the City which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage.

7.1.2 Indemnification Provision for Lease. Any lease entered with the City for the purpose of providing Government Property Lease Excise Tax shall provide that during the term of the lease, the tenant shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of the lease.

7.1.3 Condominium Release Provisions. From time to time during the term of the lease upon written request by tenant, landlord shall allow the Builder Property to be divided into legally defined lots and, thereafter, subjected to a horizontal property regime to allow condominium sales. Tenant shall have the right to have portions of the Builder Property released from the lease and the fee simple interest reconveyed to the tenant for the purposes of facilitating the sale of condominiums. Landlord and tenant agree to cooperate in all respects to allow the balance of the Builder Property to remain subject to the Government Property Lease Excise Tax while allowing portions from time to time to be converted to condominiums for sale.

7.2 Rio Salado Enhanced Services Capital Assessments.

7.2.1 Reallocation by Playa. The City and Playa agreed in Section 7.2 of the Restated DDA and the Builder hereby agrees that it may be necessary to reallocate the Rio Salado Enhanced Services Capital Assessments ("Capital Assessments") to balance the cost of development of each parcel of the Playa Project with the available offsetting incentives. As some types of land uses will have the greater use of incentives, Playa may, subject to City approval, which shall not be unreasonably withheld, re-allocate the Capital Assessments among the individual parcels within the Playa Project. The initial Capital Assessment for the Builder Property shall be in an amount equal to \$2,648,319.12 as of June 30, 2004. This Capital Assessment is subject to an annual increase ("Capital Assessment Increase") of five percent (5%) per annum effective July 1 of each calendar year. The Builder hereby agrees to payment of the annual Capital

Assessment associated with the Builder Property in accordance with the terms of this Agreement.

7.2.2 Reallocation by Builder. Beginning on the date that the City issues the final Letter of Completion for the first Phase, the Capital Assessments shall be allocated among the Phases based upon the ratio of their respective livable areas to the total livable area of the Builder Project, as indicated on the building plans for the Builder Project as approved by the City. Builder may, subject to City approval, which shall not be unreasonably withheld, re-allocate the Capital Assessments allocable to the Builder Property among the Phases in some other rational manner. If Builder records a condominium plat upon any Phase, Builder may, at its election and subject to the City's reasonable approval, choose to further re-allocate Capital Assessments to the individual condominium units ("Units") within that Phase. The City agrees that, upon its approval of any re-allocation of the Capital Assessments pursuant to this Section, the Phases or Units within the Builder Property shall be entitled to be released of record from the lien of the Capital Assessments in exchange for payment to the City of the full principal amount of the Capital Assessments that has been re-allocated to such Phase or Unit. The City agrees that it will evidence its approval of any re-allocation of, or the release of any Phase or Unit from, the Capital Assessments made pursuant to this Section in a recordable document that Builder, or the owner of the released Phase or Unit, shall thereafter be entitled to cause to be recorded in the Official Records of Maricopa County, Arizona.

7.2.3 Suspension of Capital Assessment Increase. The Capital Assessment Increase for the entire Builder Property shall be conditionally suspended as of June 30, 2004. However, in the event the Builder fails to timely comply with Item 2 of the Builder Performance Schedule, then the City shall be entitled to reassess the Capital Assessment Increase in the amount that would otherwise be due. If Builder fails to timely comply with Item 4 of the Builder Performance Schedule, then the City shall be entitled to retract the entire benefit of the suspension of the Capital Assessment Increase, but only with respect to any Phase for which the City has not then issued a Letter of Completion.

7.2.4 Capital Assessment Payments. No payment of Capital Assessments shall be due or owing from any Phase until the date that the City shall have issued the final Letter of Completion for that Phase. The amount of the first payment due from a Phase shall be prorated from the date that the City shall have issued the final Letter of Completion for that Phase, and the Phase shall thereafter be responsible for making semi-annual payments of its allocated portion of the Capital Assessments.

7.3 Rio Salado Enhanced Operations and Maintenance Assessments.

7.3.1 Reallocation by Playa. The City and Playa agreed in Section 7.3 of the Restated DDA and the Builder hereby agrees that it may be necessary to reallocate the Rio Salado Enhanced Services Operations and Maintenance Assessments ("Operations and Maintenance Assessments") to balance the cost of development of each parcel of the Property with the available offsetting incentives. As some types of land uses will have

the greater use of incentives, Playa may, subject to City approval, which shall not be unreasonably withheld, re-allocate the Operations and Maintenance Assessments among the individual parcels within the Property. The percentage of the Operations and Maintenance Assessments allocable to the Builder Property is 3.30515%. Builder agrees that the budget for and amount of the Operation and Maintenance Assessments will change from year to year. The Builder hereby agrees to payment of the annual Operation and Maintenance Assessments associated with the Builder Property.

7.3.2 Reallocation by Builder. Beginning on the date that the City issues the final Letter of Completion for the first Phase, the Operations and Maintenance Assessments shall be allocated among the Phases based upon the ratio of their respective livable areas to the total livable area of the Builder Project, as indicated on the building plans for the Builder Project as approved by the City. Builder may, subject to City approval, which shall not be unreasonably withheld, re-allocate the Operations and Maintenance Assessments allocable to the Builder Property among the Phases or Units within the Builder Property in some other rational manner. The City agrees that it will evidence its approval of any re-allocation made pursuant to this Section in a recordable document that Builder, or the owner of the Phase or Unit, shall thereafter be entitled to cause to be recorded in the Official Records of Maricopa County, Arizona.

7.3.3 Operations and Maintenance Assessment Payments. Other than the Interim Assessments in an amount equal to twenty percent (20%) of the full Operation & Maintenance Assessment, no payment of Operations and Maintenance Assessments shall be due or owing from any Phase until the date that the City shall have issued the final Letter of Completion for that Phase. The amount of the first payment due from a Phase shall be prorated from the date that the City shall have issued the final Letter of Completion for that Phase, and the Phase shall thereafter be responsible for making semi-annual payments of its allocated portion of the Operations and Maintenance Assessments.

7.4 Operations and Maintenance Assessments on Offsite Storm Water Retention Area.

7.4.1 Payment. The City and Playa agreed in Section 7.4 of the Restated DDA and the Builder hereby agrees to the payment of its prorata share of the costs of the Offsite Storm Water Retention Area, consisting of: (i) the portion of the Interim Operations and Maintenance Assessment attributable to the Offsite Storm Water Retention Area ("Park O&M Assessment"); and (ii) the cost of operating and maintaining the Offsite Storm Water Retention Area as a public park ("Park Maintenance Fee"). The percentage of the Park O&M Assessment and Park Maintenance Fee allocable to the Builder Property is 40.72%.

7.4.2 Reallocation by Builder. Beginning on the date that the City issues the final Letter of Completion for the first Phase, the Offsite Storm Water Retention Area Operation and Maintenance Assessments and the Park Maintenance Fee shall allocated among the Phases based upon the ratio of their respective livable areas to the total livable area of the Builder Project, as indicated on the building plans for the Builder Project as

approved by the City. Builder may, subject to City approval, which shall not be unreasonably withheld, re-allocate these amounts among the Phases and the Units in some other rational manner. The City agrees that it will evidence its approval of any re-allocation made pursuant to this Section in a recordable document that Builder, or the owner of the Phase or Unit, shall thereafter be entitled to cause to be recorded in the Official Records of Maricopa County, Arizona.

7.5 Sales Tax Rebate. In recognition of the benefits to the citizens of the City, as set forth in the Recitals, as an inducement for the Builder's commitment to comply with the Builder's Schedule of Performance, and because the future development of the Builder Property may be economically feasible only by the commitment of the City to provide the Builder with the benefit of a "Sales Tax Rebate Amount" (defined below) that includes a portion the City's share of: (i) all unrestricted sales or privilege taxes, including without limitation any so-called "speculative builder tax", levied and imposed by the City pursuant to Chapter 16 of the Tempe City Code in relation to the construction of the Builder Improvements (collectively, the "Construction Sales Taxes") and (ii) excise sales taxes ("Excise Sales Taxes") generated by the Builder Improvements that accrue during the period commencing after the final issuance of a certificate of occupancy and effective for a total of fifteen (15) years (the "Tax Rebate Period").

7.5.1 Sales Tax Rebate Amount. The Sales Tax Rebate Amount means an amount equal to the product obtained by multiplying (a) seventy percent (70%) by (b) the Builder's Sales Tax Revenue generated and received from the Construction Sales Taxes and Excise Taxes generated and collected on the Builder's Property, subject to the conditions set forth in paragraphs 7.5.2 and 7.5.3 below .

7.5.2 Builder's Sales Tax Revenue. The Builder's Sales Tax Revenue means City revenues derived from the Construction Sales Taxes, and the Excise Sales Taxes generated by the Builder Improvements, that occur on the Builder's Property within the Tax Rebate Period, and which the City levies and is entitled to receive, and does, in fact receive. As of the date of this Agreement, the City imposed a 1.2% unrestricted privilege tax and a .6% restricted privilege tax (0.5%-transit; 0.1%-arts) for a total privilege tax rate of 1.8%. The parties acknowledge that the restricted privilege tax of 0.1% for the arts shall always be excluded from the Builder's Sales Tax Revenue and, in the case of speculative builder taxes paid and collected pursuant to Section 16-416 of the City Code, the restricted privilege tax of 0.5% for transit shall also be excluded from the Builder's Sales Tax Revenue.

7.5.3 Payment of the Sales Tax Rebate Amount. The Sales Tax Rebate amount is specifically conditioned as follows: (i) The Construction Sales Taxes Rebate shall be remitted to the Builder semi-annually commencing on the date that is six (6) months after the date that the City shall have issued the final Letter of Completion for the initial Phase. The Construction Sales Taxes rebate is based upon the demonstrated need identified by the Builder and agreed to by the City. The Construction Sales Taxes rebate is further conditioned and shall be limited to Builder Improvements, excluding tenant improvements, for which the City issues a building permit by September 21, 2005; and (ii) The Excise Sales Tax rebate is subject to Builder's timely compliance with Items 3 and 4 of the Builder's Performance Schedule. In such event, the City shall to pay to

Builder, or the owner of a Phase, the Excise Sales Tax generated and paid by the users of the Phase in question and received by the City in consecutive six (6) month periods commencing six (6) months after the date that the City shall have issued the final Letter of Completion for that particular Phase, and continuing for a total consecutive period of 15 years for each Phase. The Sales Tax Rebate is conditioned and shall be limited to Builder Improvements, exclusive of tenant improvements, for which the City issues a building permit by September 21, 2005.

7.6 Waiver of Permit Processing Fees. Subject to Builder's timely compliance with Item 1 of the Builder's Schedule of Performance, the City agrees to waive fifty percent (50%) of all planning and building check fees, excavating and grading fees, engineering fees, and building permit fees, including without limitation mechanical, electrical, and plumbing (collectively, the "Development Processing Fees"). The remaining fifty percent (50%) of the Development Processing Fees shall be paid by the Builder at the time of the issuance of the applicable permit(s).

7.7 Deferral of Sewer and Water Development Fees. Subject to Builder's timely compliance with Item 1 of the Builder's Schedule of Performance, the City hereby agrees to defer one hundred percent (100%) of all potable water and sanitary sewer development or impact fees and charges (collectively, the "Water and Sewer Fees") for a period of five (5) years from the time of the issuance of the applicable building permit(s). The City shall receive two percent (2%) deferred interest payment, compounded daily, on the unpaid portion of the Water and Sewer Fees. Builder shall have the right to prepay the deferred Water and Sewer Fees, in whole or in part, at any time.

ARTICLE VIII

DEFAULT; REMEDIES; TERMINATION

8.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, including, without limitation, any failure to comply with the Builder Schedule of Performance attached hereto as *Exhibit "D"* and such breach or default continues for a period of ninety (90) days after written notice thereof from the non-defaulting party. Absent written agreement to the contrary, if such default is not cured within such ninety (90) day period, this Agreement may be automatically terminated, at the sole and absolute discretion of the non-breaching party and the non-breaching party is entitled, in addition to termination, to all other legal and equitable remedies, including the right to specific performance, and the right to seek and obtain actual damages.

8.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years of experience in mediating or arbitrating disputes relating to

commercial property development. The cost of any such mediation shall be divided equally between the City and the Builder or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

8.3 Builder's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 8.1 above, then, in that event, in addition to all other legal and equitable remedies which the Builder may have, the Builder may terminate this Agreement by written notice delivered to the City.

8.4 No Personal Liability. No member, official or employee of the City shall be personally liable to the Builder or Playa, or any successor or assignee (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Builder or Playa or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

8.5 City's Remedies. In the event that the Builder is in breach under this Agreement by failing to acquire the Builder Property within 120 calendar days following the execution of this Agreement or develop the Builder Property in accordance with the Builder Schedule of Performance attached hereto as *Exhibit "D"* and the Builder thereafter fails to cure any such breach within the time period described in Section 8.1 above, then the City shall have the right to automatically terminate this Agreement immediately upon written notice to the Builder.

8.6 Effect of Event of Termination. Upon the termination of this Agreement as the result of the default or breach of the Builder, the Builder shall have no further rights to develop the Builder Property pursuant to the terms of this Agreement or have any further rights to City-provided development incentives pursuant to this Agreement and Builder, if applicable, agrees to immediately accept conveyance of the Builder Property and Builder Improvements from the City pursuant to Section 7.1.

ARTICLE IX

GENERAL PROVISIONS

9.1 Liability and Indemnification. The Builder and Playa, jointly and severally or comparatively, shall unconditionally indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by the Builder or Playa.

9.2 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating

to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

9.3 Notice. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

To Builder:	GDG Partners L.L.C. c/o Gray Development Group 2555 East Camelback Road, Suite 1050 Phoenix, Arizona 85016 Attention: Bruce Gray
With a copy to:	Brian J. Jordan Kutak Rock, LLP 8601 North Scottsdale Road, Suite 300 Scottsdale, Arizona 85253-2742
With a copy to:	Playa Del Norte L.L.C. 502 S. College Avenue Suite 303 Tempe, Arizona 85281
With a copy to:	Gary A. Drummond, Esq. Sallquist & Drummond, P.C. 2525 E. Arizona Biltmore Circle Suite 117 Phoenix, Arizona 85016
To the City:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281
With a copy to:	City Attorney City of Tempe 21 East Sixth Street Suite 201 Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

9.5 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

9.6 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

9.7 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

9.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein, except *Exhibit "F"*.

9.9 Recordation of Agreement. This Parcel Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after all parties have executed this Parcel Agreement.

9.10 City Manager's Power to Consent. The City authorizes and empowers the City Manager to consent to any and all requests of the Builder requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Builder has executed and sealed the same on or as of the day and year first above written.

ATTEST:

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

City Clerk

APPROVED AS TO FORM:

By _____
Neil Giuliano, Mayor

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2004, before me, the undersigned officer, personally appeared Neil Giuliano, who acknowledged himself to be Mayor of the CITY OF TEMPE, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

"MASTER DEVELOPER"

PLAYA DEL NORTE, L.L.C. an Arizona limited liability company

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2004, before me, the undersigned officer, personally appeared _____ who acknowledged him/herself to be the _____ of _____, an Arizona limited liability company, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

"BUILDER"

GDG PARTNERS, L.L.C., an Arizona limited liability company,

By _____
Name _____
Title _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2004, before me, the undersigned officer, personally appeared _____ who acknowledged him/herself to be the _____ of _____, an Arizona limited liability company, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

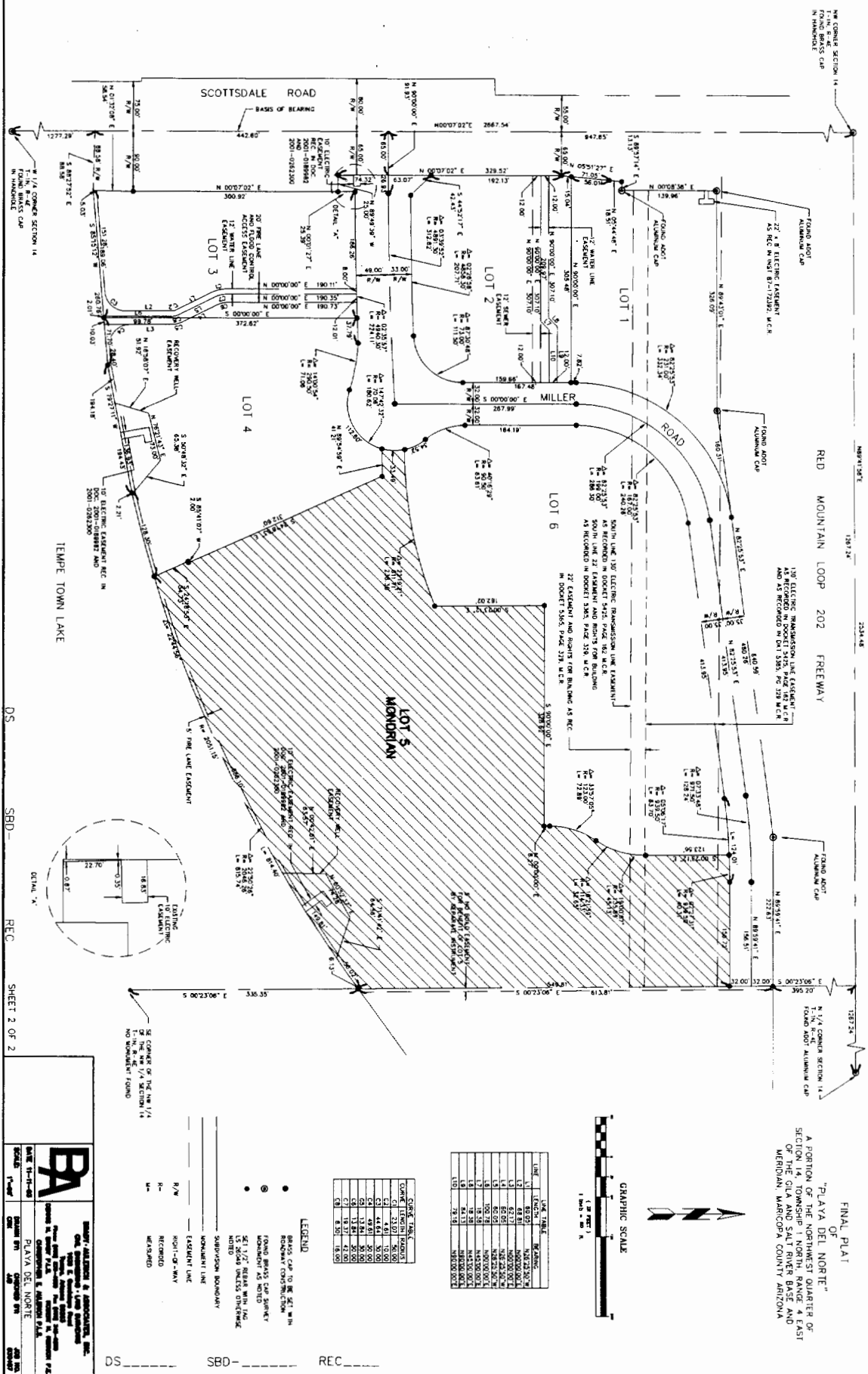
NOTARY SEAL:

Notary Public

LIST OF EXHIBITS

Exhibit "A"	Builder's Property
Exhibit "B"	City Property
Exhibit "C"	Builder's Conceptual Site Plan
Exhibit "D"	Builder's Schedule of Performance
Exhibit "E"	Builder Phasing Plan
Exhibit "F"	Land and Improvement Lease

**Mondrian Tempe Town Lake
Exhibit A - Legal Description of Builder's Property**



CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	23.07	50.00
C2	4.61	10.00
C3	44.64	30.00
C4	49.61	30.00
C5	13.84	30.00
C6	13.84	30.00
C7	19.17	42.00
C8	8.30	16.00

LINE TABLE		
LINE	LENGTH	READING
L1	80.05	N46.23.30 W
L2	68.81	N09.00.00 E
L3	62.17	N07.00.00 E
L4	60.65	N46.23.30 W
L5	60.05	N46.23.30 W
L6	100.78	N09.00.00 E
L7	18.56	N46.23.30 W
L8	18.38	N46.23.30 W
L9	84.13	N46.23.30 W
L10	78.16	N46.23.30 W

LEGEND

- BRASS CAP TO BE SET WITH ROADWAY CONSTRUCTION
- FOUND BRASS CAP SURVEY MONUMENT AS NOTED
- SET 1/2" REBAR WITH TAG L5 26049 UNLESS OTHERWISE

	EASUREMENT LINE
R/W	RIGHT-OF-WAY
R-	RECORDED
M-	MEASURED


	BAUER, MALLICK & ASSOCIATES, INC. ONE BRIMLEY - 1000 BRIMLEY 1001 E. BRIMLEY ROAD TROY, MICHIGAN 48063 (313) 246-2000 ext. 200 FAX (313) 246-2000 COLUMBIA & MICHIGAN P.O.
	PLAYA DEL NORTE 2000 8TH CERRITOS 94008 408 850 8300
BAUER 11-11-88 1-1-89	2000 8TH CERRITOS 94008 408 850 8300

EXHIBIT “B”

City Property

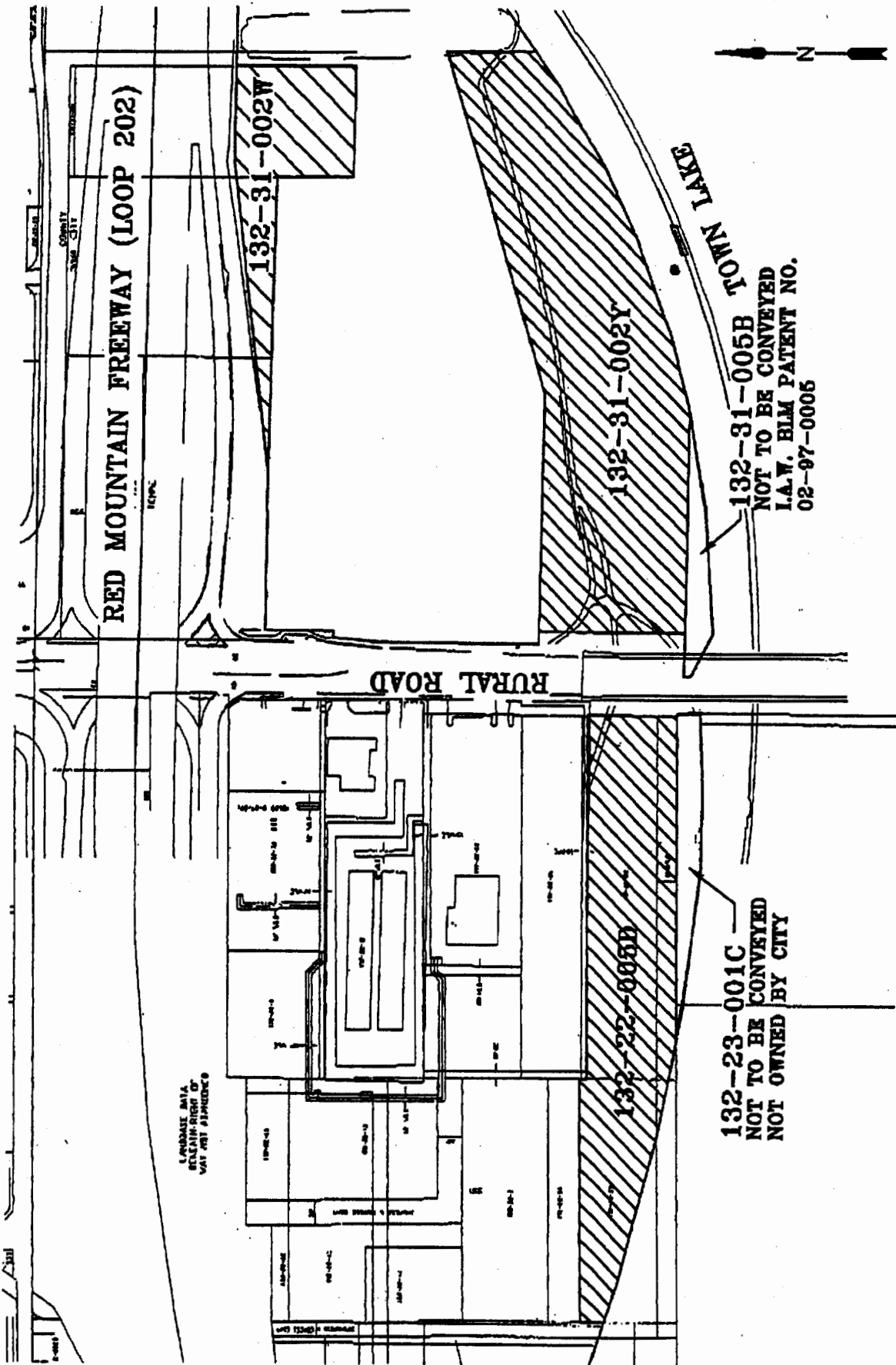


EXHIBIT-B
CITY PROPERTY

Playa del Norte

EXHIBIT “C”

Builder’s Conceptual Site Plan

Red Mountain Freeway

Exhibit C - Concept Plan

Mondrian at Tempe Town Lake

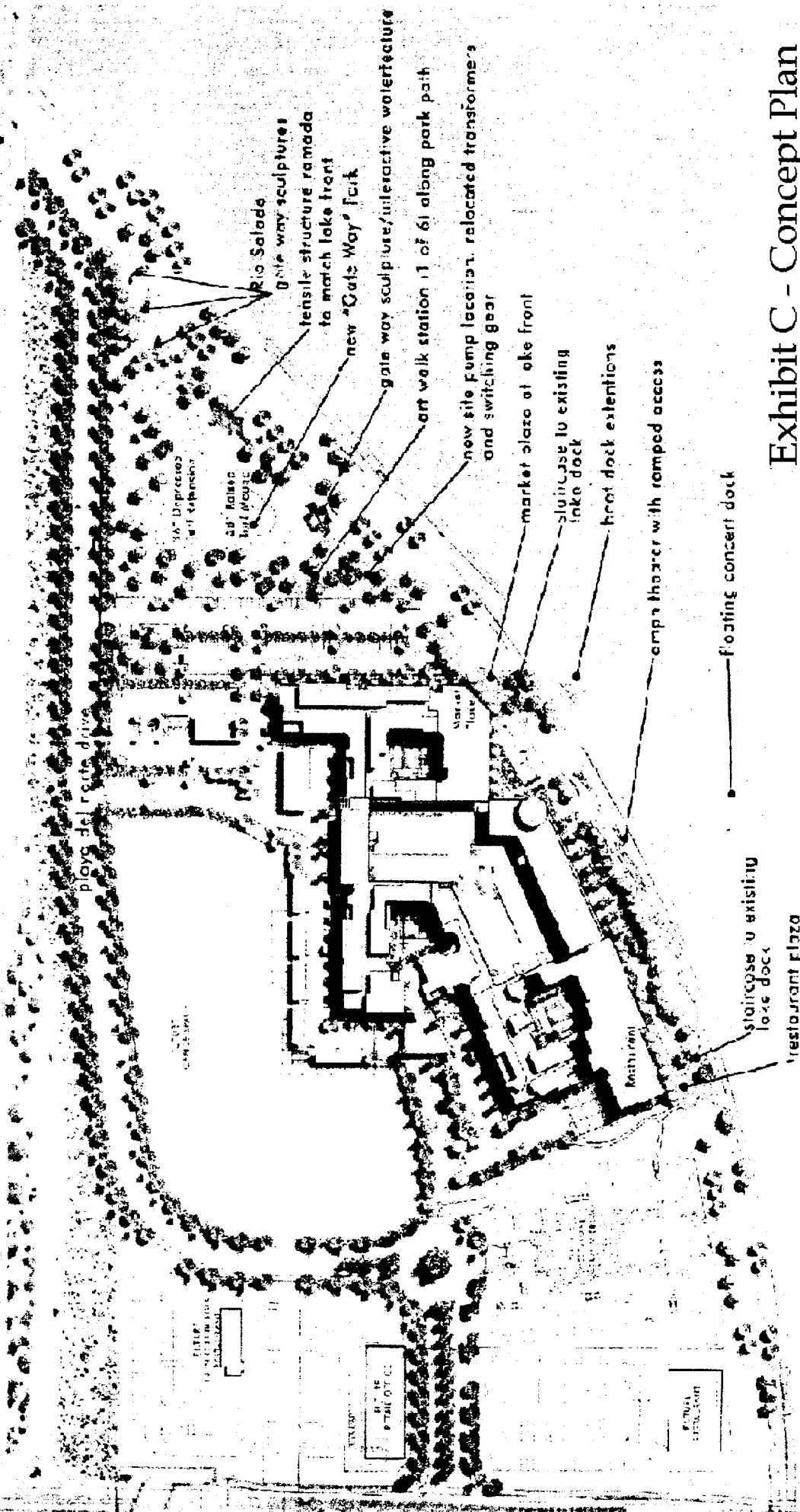


EXHIBIT “D”

Builder’s Schedule of Performance

EXHIBIT "D"

PLAYA DEL NORTE
DEVELOPMENT PARCEL AGREEMENT
PARCEL NO. 5

BUILDER'S PERFORMANCE SCHEDULE

Item Number	Time for Performance	Description of Required Performance
1	75 days from Agreement Date	Submit architectural, civil, mechanical, electrical, and plumbing plans for Builder's Project to City of Tempe Development Services Department for plan review
2	December 31, 2004	Start construction on Builder's Project
3	May 31, 2006	Complete construction on Phase One of Builder's Project
4	December 31, 2007	Complete all Phases of Builder Project
5	June 30, 2014	Record a condominium plat for those portions of Builder's Project to be converted to condominiums

The times for the performance of the items on the foregoing Builder Performance Schedule shall be subject to the following conditions and limitations:

1. The City will provide initial plan review comments to Builder's Project plans not later than twenty (20) calendar days of first submittal, and the City will provide subsequent plan review comments within five (5) calendar days of re-submittal. If the City fails to meet either of the response times set forth in the preceding sentence, the time for performance of Item 2 of Builder Performance Schedule shall be extended by one (1) day for each day between the required response time and the day upon which Builder receives the required response from the City.

2. The City will conduct its initial architectural and structural plan review prior to Builder's submittal of third-party items, including but not limited to: precast concrete shop drawings and calculations; roof and floor truss shop drawings and calculations; fire sprinkler system shop drawings and calculations; fire alarm system shop drawings; APS electrical plans.

3. Playa must timely perform all of its obligations under the MDA, and the Improvements must be completed in conformance with original Improvement District project schedule. If Playa does not timely perform all of its obligations under the MDA or if the Improvements are not completed in accordance with the schedule, the time for performance of Items 2, 3, and 4 of Builder Performance Schedule shall be extended by one (1) day for each day between the required performance or scheduled completion dates and the date upon which the performance or completion actually occurs.

4. The APS facilities extension must be completed within 180 days of Builder commencing with construction of the Builder Project. If the facilities extension is not completed in accordance within this 180-day timeframe, the time for performance of Items 3 and 4 of Builder Performance Schedule shall be extended by one (1) day for each day between the 180th day and the date upon which the completion of the facilities extension actually occurs.

EXHIBIT “E”

Builder’s Phasing Plan

EXHIBIT "F"

Terms subject to negotiation and approval of Council

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE ("Lease") is made and entered into as of the _____ day of _____, 2004 by and between the **CITY OF TEMPE**, a municipal corporation ("Landlord"), and _____, ("Tenant").

RECITALS

- A. Landlord has title of record to the land and building(s) which comprises the improvements constructed on land described in **Exhibit A** hereto (the "Land"), together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Premises").
- B. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). The construction of the Premises resulted in an increase in property value of at least one hundred percent.
- C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under ARS §42-1902 (the "Tax"). By Resolution No. _____, dated _____, Landlord abated the Tax for the period beginning upon the issuance of the certificate of occupancy for the Premises and ending eight years thereafter, all as provided in A.R.S. §42-1962(A). But for the abatement, Tenant would not have caused the Premises to be constructed.

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

5.2 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.3 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.4 Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Commencement Date and at the end of the Lease term.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-1901(2), the Premises may be used and occupied by Tenant for any lawful purpose.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

- a. disruption in the supply of services or utilities to the Premises;
- b. maintenance, repair or restoration of the Premises;
- c. any other cost, expense, duty, obligation, service or function related to the Premises.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time

to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. Title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, when not in default hereunder, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, razing, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the first five years of the term shall not be less than \$5,000,000.00 combined single limit. The minimum policy limits shall be increased as of the fifth anniversary of the Commencement Date to an amount equal to \$5,000,000.00 multiplied by a fraction, the numerator of which is the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") for the month three months prior to such fifth anniversary and the denominator of which is the CPI for _____, 200_. In the event the CPI is discontinued or substantially modified, Tenant shall substitute such alternative price index, published by the United States Government or other generally accepted source for such information, reconciled to the Commencement Date. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty

(30) days prior notice to Landlord (ten (10) days for nonpayment). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

13. Fire and Other Casualty. In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, subject to the applicable provisions of this Lease, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), Tenant or Tenant's successor by Foreclosure shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty days after the date of the notice. Upon default under the Leasehold Mortgage, Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 20.

15.2 Leasehold Mortgagees and Tenant. If there are any Leasehold Mortgagees as defined in Section 4(a), Tenant may not terminate, modify or waive its Option under this section without the approval of the Leasehold

Mortgagees, and Landlord will not recognize or consent thereto without such approval.

16. Assignment; Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right to assign the Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or persons, without the consent of the Landlord.

16.2 Liability. Each assignee hereby assumes all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

17.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant or a failure to pay the Tax when due, where such failure continues for one hundred eighty days after written notice thereof by Landlord to Tenant shall constitute a default and breach of this Lease by Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such one hundred eighty day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2 Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord. This section constitutes the provision required under A.R.S. §42-1931(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold

Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied.

18. No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

19. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. The Leasehold Mortgagee shall have the right for a period of sixty days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition and to remedy any default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

21. In case of a default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section ___, if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such defaults as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause (1) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (2) above, if and when such default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, a default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed a default hereunder.

23. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in subparagraphs (iv) (1) and (2) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

24. No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

24.1 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

25. New Lease.

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of

the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

- a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;
- b. Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys fees, which Landlord shall have incurred by reason of such termination;
- c. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

25.2 The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

26. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 25 or to cure any default of Tenant referred to above.

27. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this Section 27, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

28. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in this Section 28, or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant.

31.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a deed or bill of sale reconveying all of Landlord's right title and interest in the improvements to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in Tenant.

32. Title and Warranties. Notwithstanding anything to the contrary in this section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the consent of Tenant. The

Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

33. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

34. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, Landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

35. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (ii) that there are no uncured defaults in Tenant's performance.

36. General Provisions.

36.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

- a. The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.
- b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.
- c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

36.4. Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

36.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

36.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements lease, a form of which is attached hereto as Exhibit B.

36.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:

City of Tempe
City Manager's Office
31 E; 5th Street
Tempe, Arizona 85281

With a copy to:

City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant:

With a copy to:

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two hours after the postmark on the certified or registered mail, as the case may be.

36.9 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

36.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Hold Over. If Tenant shall continue to occupy the Leased Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall

not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

37. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the Buildings and other improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LANDLORD:

CITY OF TEMPE, a municipal corporation

By: _____
Name: _____
Title: _____

TENANT:

By: _____
Name: _____
Title: _____